

STATE OF MICHIGAN
COURT OF APPEALS

JAMES KOTSONIS,

Plaintiff-Appellee,

v

JOHN KOTSONIS and KSI MACHINE &
ENGINEERING, INC.,

Defendants-Appellants.

UNPUBLISHED

August 15, 2000

No. 216274

Macomb Circuit Court

LC No. 97-005427-CZ

Before: Smolenski, P.J., and Wilder and Meter, JJ.

PER CURIAM.

Defendants appeal from a circuit court order allowing plaintiff, James Kotsonis, to purchase defendant John Kotsonis' shares in the defendant corporation, KSI Machine & Engineering, Inc. ("KSI").¹ We affirm.

KSI is a machine shop which primarily performs work for the automotive industry. James and John Kotsonis, who are brothers, each own fifty percent of KSI's stock, and serve as the corporation's only directors. In 1995, a family feud ensued, and the brothers have not spoken to each other since that time. James filed this suit alleging that defendants engaged in "illegal, willfully unfair, and oppressive conduct." James asserted that a deadlock between the directors existed, and sought dissolution of KSI in the form of an order allowing him to purchase John's shares of the corporation. Defendant John Kotsonis filed a counter-complaint, both on his own behalf and on behalf of KSI. Defendants alleged that James breached fiduciary duties to KSI, wasted corporate assets, and diverted KSI funds for the personal use of himself and his family. Defendants also requested that the court remove James from his position as director. Following a bench trial, the court ordered the sale of John's shares in KSI to

¹ Defendant John Kotsonis appealed both on his own behalf and ostensibly on behalf of defendant KSI. Eventually, KSI filed a separate brief on appeal, in which it expressly declined to take a position on the issues presented. The designation of KSI as a defendant-appellant is therefore irrelevant to our resolution of the issues presented in this case.

James for \$2,600,000, and ordered James to reimburse KSI in the amount of \$20,000 for unauthorized payments made to his son. Defendants appeal as of right.

A trial court's decision in an equity action is reviewed de novo. However, findings of fact are reviewed under a clearly erroneous standard, with due deference given to the superior position of the trial judge to determine credibility. MCR 2.613(C); *Badon v General Motors Corp*, 188 Mich App 430, 438; 470 NW2d 436 (1991). A finding is clearly erroneous when, although evidence supports it, this Court is left with a firm conviction that the trial court made a mistake. *Featherston v Steinhoff*, 226 Mich App 584, 588; 575 NW2d 6 (1997). Appellate courts must give regard to the trial court's superior ability to judge the credibility of the witnesses who appeared before it. *Brooks v Rose*, 191 Mich App 565, 570; 478 NW2d 731 (1991).

Defendants first argue that the equitable doctrine of "unclean hands" barred James' claim, because of his inequitable conduct. Corporate dissolution proceedings are equitable in nature, *In re Dissolution of Esquire Products Int'l, Inc (On Remand)*, 145 Mich App 106, 111; 377 NW2d 356 (1985), and a party "cannot benefit from equity when it comes before the court with unclean hands." *Morris v Clawson Tank Co*, 459 Mich 256, 275 n 14; 587 NW2d 253 (1998). This Court has held that "[a]ny wilful act concerning the cause of action which transgresses equitable standards of conduct is sufficient cause for the invocation of the clean hands doctrine." *Bellware v Wolffs*, 154 Mich App 715, 720; 397 NW2d 861 (1986). However, this doctrine is invoked by the Court in its discretion to protect the integrity of the Court. *Stachnik v Winkel*, 394 Mich 375, 386; 230 NW2d 529 (1975); *Attorney General v Ankersen*, 148 Mich App 524, 545; 385 NW2d 658 (1986).

We conclude that plaintiff's dissolution action was not barred by the unclean hands doctrine. The trial court found that "neither James nor John have established illegal, wilful, unfair, or oppressive conduct . . . or violation of fiduciary duties." We cannot conclude that these findings are clearly erroneous. Addressing the conduct of James, which is John's claim on appeal, we find support for the trial court's findings. John acknowledged that KSI had a practice of loaning money to employees. Although John was unaware of some specific loans and advancements, James continued to give John his fifty percent share of all monies collected throughout the years when they did not speak to each other. The trial court's finding that James' advancements to his son were unauthorized does not require dismissal of the case based upon the doctrine of unclean hands. Defendant did not make a sufficient showing of bad faith or intent to deceive, which would justify invoking the doctrine of unclean hands to protect the integrity of the court. *Ankersen, supra* at 544-545. The court is not permitting plaintiff to benefit from his own misconduct.

Defendant next challenges the trial court's finding of deadlock under MCL 450.1823; MSA 21.200(823). The statute authorizes a circuit court to order the dissolution of a corporation under certain circumstances:

A corporation may be dissolved by a judgment entered in an action brought in the circuit court of the county in which the principal place of business or registered office of the corporation is located by 1 or more directors or by 1 or more shareholders entitled

to vote in an election of directors of the corporation, upon proof of both of the following:

(a) The directors of the corporation, or its shareholders if a provision in the articles of incorporation authorized by subsection (1) of section 463 is in effect, are unable to agree by the requisite vote on material matters respecting management of the corporation's affairs, or the shareholders of the corporation are so divided in voting power that they have failed to elect successors to any director whose term has expired or would have expired upon the election and qualification of his or her successor.

(b) As a result of a condition stated in subdivision (a), the corporation is unable to function effectively in the best interests of its creditors and shareholders.

The evidence clearly supported the trial court's finding that deadlock existed. First, the two directors were completely "unable to agree . . . on material matters respecting management of the corporation's affairs." MCL 450.1823(a); MSA 21.200(823)(a). The dispute between James and John also rendered them unable to fill a vacancy on the board of directors. Finally, the evidence supported a finding that the corporation was unable to function effectively in the best interests of its creditors, as John refused to approve payment to a creditor for a machine purchased with the board's earlier approval. The evidence supported a finding that both statutory requirements were satisfied. We find no error.

Finally, defendants argue that the trial court improperly weighed the testimony of Jeffrey Risius, an expert witness who testified regarding the value of John's stock in KSI. Defendants argue that the trial court improperly accorded greater credence to Risius' valuation of the business than it accorded to the valuation by John's expert witness, Don Gill. Risius valued John's stock at \$1,600,000, while Gill valued it at \$5,450,000. The trial court made a factual determination that the fair market value of John's stock was \$2,600,000. We disagree that the trial court committed error requiring reversal.

The weight to be given to an expert's testimony is a matter for the finder of fact. *Marlo Beauty Supply, Inc v Farmers Ins Group of Companies*, 227 Mich App 309, 323; 575 NW2d 324 (1998). The trial court explicitly rejected both experts' valuations and specified its reasons for rejecting aspects of both experts' testimony. Although defendants complain that Risius' testimony was based upon graphs that were not admitted into evidence at trial and were not subject to cross-examination, an expert witness may base an opinion on hearsay information and facts gathered by nonexperts. *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 175; 530 NW2d 772 (1995). Furthermore, the graphs to which defendants refer were only one element that factored into the projected sales figure, and the projected sales figure itself was but one factor in fixing the overall value of KSI. Risius testified that his appraisal was based also upon his review of past financial statements, notes of board meetings, the shareholder agreement, his discussions with management, as well as his study of industry trends and economic

indicators. We reject defendants' argument that the trial court improperly weighed Risius' testimony.

Affirmed.

/s/ Michael R. Smolenski

/s/ Kurtis T. Wilder

/s/ Patrick M. Meter